

# CHANGING AN EX PARTE ORDER - Forms and Instructions

## GENERAL INSTRUCTIONS

These forms are for people who have been served with an ex parte order and want to object to and change that order. Carefully read and follow all of the instructions before filling out the forms so that you understand the rights and duties of all parties.

You must act immediately. The law requires that you file an objection and/or motion within 14 days after you are served with the ex parte order. After you file the objection and/or motion, the Friend of the Court is required to attempt to resolve the dispute. The law requires the Friend of the Court to do this within 14 days after they receive your objection. If the dispute cannot be resolved by the Friend of the Court, the matter will be scheduled by the Friend of the Court for a hearing. You may represent yourself at the hearing or have an attorney represent you. The Friend of the Court office does not have to make an investigation or report unless ordered by the court to do so. The Friend of the Court does not represent either party at this hearing.

Included in these instructions are steps which will help you:

- File and send an “OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY” form, see Section A.
- Get ready for a court hearing.
- Complete the “ORDER MODIFYING EX PARTE ORDER” after the hearing, see Section C.
- Get approval, file, and serve the “ORDER MODIFYING EX PARTE ORDER”, see Section D.

<b>Section A:    Completing an “OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY” form (FOC Form 61):</b>
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If you want to object to the ex parte order or ask the court to rescind (set aside) or modify the ex parte order, you must file an “OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY” form.

Completing the “**OBJECTION AND MOTION**” Section on the “OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY” form (FOC Form 61):

- Step 1:**    Locate the “OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY” form.
- a. Print or type your case number in the upper right-hand corner.
  - b. From your court papers, identify who is the plaintiff and who is the defendant. Fill in the names, current addresses, telephone numbers, and social security numbers for yourself and the other party in the boxes provided. Fill in the names and addresses of the attorneys if there are any.
- Step 2:**    Put your name on the “Name of the party filing motion” line.
- Step 3:**    Put an “X” in one or more of the boxes in item 2 to show that you object to the custody, visitation, or support order. Write in the reasons why you think the order should be changed.
- Step 4:**    When you have completed these steps, fill in the date and sign your name.

Completing the “**NOTICE OF HEARING**” Section on the “**OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY**” form (FOC Form 61):

**Step 1:** Before you can complete this section, you must get a hearing date, time, and location from:  
[ ]

**Step 2:** Be sure to get the following information:  
a. Name of the Judge or Referee  
b. Date the hearing is to be held  
c. Time of the hearing  
d. Where the hearing is going to be held. (City, building, room, etc.)

**Step 3:** Print or type this information in the blanks on the form.

Completing the “**CERTIFICATION OF MAILING**” Section on the “**OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY**” form (FOC Form 61):

There are court rules which must be followed which make sure that the other person knows about the hearing. The “**OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY**” form must be mailed **at least 9 days** before the hearing date.

**Step 1:** Make sure that you have the original form which you have been filling out and one copy for each of the following: the other person, each attorney (if any), the Friend of the Court, and yourself. Check all of the copies to make sure that each can be read.

**Step 2:** Mail one of the copies to the other person and to each attorney. Make sure that your return address is on the envelope.

**Step 3:** After mailing the copies, write the date that you actually mailed the copies on the original “**OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY**” form. You should sign and print your name on the lines provided.

**Step 4:** Mail or take the original copy and another copy for the Friend of the Court to the [ ] before the hearing date. The original copy of the form must be received and stamped by the [ ] **at least 7 days** before the hearing date. **Note:** Some counties charge a \$10.00 filing fee. Contact the [ ] in your county to find out whether a fee is charged.

### **What happens if the copy you sent to the other party is returned to you?**

The hearing cannot be held until it can be proven to the court that both parties know about the hearing. If the other person’s copy is returned to you, you must:

1. Get the current address of the other person from the Friend of the Court or another source.
2. If there are less than 9 days before the original hearing date, cancel the original hearing date and schedule a new one.
3. Fill out a “new” “**OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY**” form. Complete this form using the directions on page 1 and 2 of the instructions.
4. When a new address cannot be obtained, cancel the original hearing date which has been scheduled. Other ways of notifying the other party are listed in the Michigan Court Rules (MCR 2.106). A copy of the Michigan Court Rules may be available at your local library.

## **GETTING READY FOR COURT**

Listed below are some tips which may help both parties get ready for the hearing.

1. Make a list of information which you feel is important for the Judge or Referee to know.
2. Bring any papers such as pay stubs, tax returns, unemployment records, expenses for children, etc. that you think will show the Judge or Referee why or why not a change in the ex parte order should be made. You will need to make two copies of any papers you will show to the Judge or Referee.
3. Read the “ORDER MODIFYING EX PARTE ORDER” form carefully and take it to the hearing with you. This form may be filled out during or after the hearing.

## **THE HEARING**

Listed below are some tips which may help both parties during the hearing.

1. Listen carefully to what the Judge or Referee says during the hearing.
2. If you want to tape record the hearing, you must ask the Judge or Referee before the hearing starts.
3. The Judge or Referee will listen to you but do not interrupt them or the other party. Raise your hand and wait for the Judge or Referee to call on you before speaking.
4. Ask questions of the Judge or Referee if you do not understand the changes they have ordered.
5. Make sure you know and write down the following:
  - a. When the change in the order begins (Date).
  - b. How much the support amounts will be for 1 child, 2 children, 3 children, etc.
  - c. What will be the new visitation order.
  - d. Who will have legal custody. Who will have physical custody. (joint, plaintiff, defendant)
  - e. Who is going to prepare and file the “ORDER MODIFYING EX PARTE ORDER” form after the hearing.
  - f. Other changes ordered by the Judge or Referee.

<b>Section C: Completing the “ORDER MODIFYING EX PARTE ORDER” form (FOC Form 62):</b>
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Before completing this form you will need to know the following information:

- Who is the plaintiff and who is the defendant
- The date the hearing was held
- Name of the Judge or Referee
- Who is going to have legal and physical custody
- What are the new visitation arrangements
- New support amount and amount per child
- Overdue support payment plan, if any
- Any changes in the health care provision
- Other changes ordered by the Judge or Referee
- Date the new order starts

- Step 1:** Locate the “ORDER MODIFYING EX PARTE ORDER” form.
- a. Print or type your case number in the upper right-hand corner.
  - b. From your court papers, identify who is the plaintiff and who is the defendant. Fill in the names, current addresses, telephone numbers, and social security numbers for yourself and the other party in the boxes provided. Fill in the names and addresses of the attorneys if there are any.
- Step 2:** Put the date the hearing was held and the name of the Judge or Referee on the lines provided.
- Step 3:** Put an “X” in one or more of the boxes if the Judge or Referee ordered a change in the custody, visitation, or support order. If a change was made in the custody order, fill in the changes exactly as ordered. If a change was made in the visitation order, fill in the new visitation terms exactly as ordered. If a change was made in the amount of support, fill in the amount of support. If there is more than one child you must also write in the amount that should be paid for each child.
- Step 4:** Check the box in item 2 if the Judge or Referee made any other changes. Print or type the changes on a separate piece of paper and attach to the Order and each of the copies.
- Step 5:** In item 3 write the date that the new order starts.
- Step 6:** Get the order approved, filed, and served using the steps below.

**Section D: Approval, Filing, and Serving the “ORDER MODIFYING EX PARTE ORDER”**

If you are asked to sign the “ORDER MODIFYING EX PARTE ORDER” you can respond in one of the following ways:

1. If you think that the written Order accurately states what was ordered in court, sign the Order.
2. If you don’t think that the Order accurately states what was ordered in court, attend the scheduled hearing. **(See Section D, Part 2).**

If you are preparing the “ORDER MODIFYING EX PARTE ORDER” form, there are 3 ways you can get the Order signed by the Judge or Referee.

1. You can fill out the Order at the time of the hearing and ask the Judge or Hearing Officer to sign it. **(See Section D, Part 1).**
2. You can fill out the Order after the hearing, get the other party’s signature, and take or mail the Order to the Judge or Referee for signature. **(See Section D, Part 1).**
3. If the other party will not sign the Order, you will need to schedule another hearing. **(See Section D, Part 2).**

**Section D, Part 1: Approval of the ORDER MODIFYING EX PARTE ORDER - No Hearing**

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- Step 1:** Have the other party sign the completed “ORDER MODIFYING EX PARTE ORDER” form.
- Step 2:** Give the signed “ORDER MODIFYING EX PARTE ORDER” to the Judge or Referee. The Judge or Referee will sign the order if there are no mistakes.

- Step 3:** After the order has been signed by the Judge or Referee, give the original “ORDER MODIFYING EX PARTE ORDER” and all of the copies to the [ ] for filing. Ask the [ ] to stamp the copies with “True Copy” and the date filed. The [ ] will keep the original and one copy for the Friend of the Court. **NOTE:** If you plan to mail the “ORDER MODIFYING EX PARTE ORDER” to the Judge or Referee for signing and to the [ ] for filing, call the [ ] first to find out how they want you to do this.
- Step 4:** Send a copy of the stamped Order to the other party and keep a copy for your own files.
- Step 5:** Fill out the “PROOF OF MAILING” form (FOC Form 54). (See Section D, Part 3).

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**Section D, Part 2:** Approval of the ORDER MODIFYING EX PARTE ORDER - With a Hearing

- Step 1:** Get the following information from the [ ]:
- Name of the Judge or Referee
  - Date the hearing is to be held
  - Time of the hearing
  - Where the hearing is going to be held. (City, building, room, etc.)
- Step 2:** Locate the “NOTICE OF HEARING FOR ENTRY OF ORDER” form (FOC Form 53).
- a. Print or type your case number in the upper right-hand corner.
  - b. From your court papers, identify who is the plaintiff and who is the defendant. Fill in the names, current addresses, telephone numbers, and social security numbers for yourself and the other party in the boxes provided.
- Step 3:** Put your name on the “Name of party filing order” line.
- Step 4:** In item 1, put in the date that the hearing on the Motion was held.
- Step 5:** In item 3, print or type the information you got from the [ ] in the blanks on the form.
- Step 6:** When you have completed these steps, put in the date and sign your name.

Completing the “**CERTIFICATE OF MAILING**” section on the “NOTICE OF HEARING FOR ENTRY OF ORDER” form. (FOC Form 53).

There are court rules which must be followed which make sure that the other person knows about the hearing. The “NOTICE OF HEARING FOR ENTRY OR ORDER” form must be mailed **at least 9 days** before the hearing date.

- Step 1:** Make sure that you have the original form which you have been filling out and one copy for each of the following: the other person, the attorneys (if any), the Friend of the Court, and yourself. Check all of the copies to make sure that each can be read.
- Step 2:** Mail one of the copies to the other person with a copy of the proposed “ORDER MODIFYING EX PARTE ORDER”. Make sure that your return address is on the envelope.
- Step 3:** After mailing the other person’s copy, write the date that you actually mailed the copy on the original “NOTICE OF HEARING FOR ENTRY OF ORDER” form. You should sign and print your name on the lines provided.
- Step 4:** File the original “NOTICE OF HEARING FOR ENTRY OR ORDER” and a copy of the proposed “ORDER MODIFYING EX PARTE ORDER” with the [ ]].

- Step 5:** Take the original “ORDER MODIFYING EX PARTE ORDER” to the hearing for the Judge or Referee to sign. Any objections about the language used in the Order can be made at the hearing.
- Step 6:** After the Judge or Referee has signed the Order, follow steps 3 through 5 in Section D, Part 1.

**Section D, Part 3: Completing the “PROOF OF MAILING” Form (FOC Form 54)**

It is required by the Michigan Court Rules that all parties receive a copy of all court orders given to the [ ]. It will be necessary to prove to the court that a copy was sent to every party.

- Step 1:** Locate the “PROOF OF MAILING” form.
  - a. Print or type your case number in the upper right-hand corner.
  - b. From your court papers, identify who is the plaintiff and who is the defendant. Fill in the names, current addresses, telephone numbers, and social security numbers for yourself and the other party in the boxes provided.
- Step 2:** Write in the date the Order was stamped by the [ ] on the line provided.
- Step 3:** Fill in the name and address of the other party and the attorneys (if any) to whom you mailed a “True Copy” of the signed Order in the space provided.
- Step 4:** Put in the date that you actually mailed the “True Copy” of the Order and sign your name. You must also print or type your name on the line below the signature line.
- Step 5:** Give the completed “PROOF OF MAILING” form to the [ ] for filing. You should make a copy of this form for your records.